

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

	)	
UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324a Proceeding
	)	
v.	)	OCAHO Case No. 96A00014
	)	
GUAM TRANS-PACIFIC BUILDERS, INC.	)	
AND ENRICO V. MERCADO,	)	
Respondents.	)	Judge Robert L. Barton, Jr.
	)	

## DECISION AND ORDER APPROVING CONSENT FINDINGS (July 17, 1996)

On February 6, 1996, a Complaint Regarding Unlawful Employment was filed by the United States (“Complainant”) against Guam-Trans-Pacific Builders, Inc. and Enrico V. Mercado, Individually (“Respondents”), pursuant to 8 U.S.C. §1324a. Attached to the Complaint and incorporated therein by reference was a Notice of Intent to Fine, which had previously been served upon Respondents on April 27, 1995.

By a document entitled "Settlement Agreement" executed by the parties on June 28, 1996, the parties have tendered an agreed disposition which contemplates a final order and which forms the basis of this Decision and Order. By "Motion to Approve Consent Findings" filed on July 8, 1996, counsel for the Complainant transmitted the "Settlement Agreement."

## FINDINGS OF FACT AND CONCLUSIONS OF LAW


1. The Settlement Agreement referred to above, including recitation of the facts contained therein, is adopted and made a part of the Decision and Order, according to its terms as if fully set out herein.
2. That Respondents admit all allegations sustaining the violations set forth in Counts I and II, to wit, that they knowingly continued to employ 23 individuals not authorized for employment in the United States in violation of 8 U.S.C. §1324a(a)(2), and failed to prepare the Employment Eligibility Verification Form (Form I-9) for 19 employed individuals, in violation of 8 U.S.C. §1324a(a)(1)(B).

3. I conclude that the Settlement Agreement is fair and satisfactory, and there is no reason not to accept it, within the contemplation of 28 C.F.R. §68.14.

4. On the basis of the Settlement Agreement, I find and conclude that Respondents have violated 8 U.S.C. §1324a(a)(2) with regard to 23 individuals, and that Respondents have violated 8 U.S.C. §1324a(a)(1)(B) with regard to 19 individuals named in the Complaint.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. That the Motion to Approve Consent Findings is granted;
2. That Respondent pay an aggregate civil monetary penalty of \$7,650.00 relating to the allegations of Counts I and II;
3. That each party bear its own attorney fees, other expenses and costs incurred by such party in connection with any stage of these proceedings;
4. That this Decision and Order has the same force and effect as a decision and order made after a full administrative hearing;
5. That the entire record on which this Decision and Order is based consists solely of the Complaint, the Notice of Hearing and the Settlement Agreement duly executed by the parties;
6. That the parties have waived any further procedural steps before the Administrative Law Judge;
7. That the parties have waived any right to challenge or contest the validity of this Decision and Order;
8. That the hearing to be set is canceled;
9. That as provided in 28 C.F.R. §68.53 of the Rules of Practice and Procedure, this Decision and Order shall become the final order of the Attorney General unless within thirty (30) days from this date the Chief Administrative Hearing Officer modifies or vacates the order.

  
**ROBERT L. BARTON, JR.**  
**ADMINISTRATIVE LAW JUDGE**

## CERTIFICATE OF SERVICE

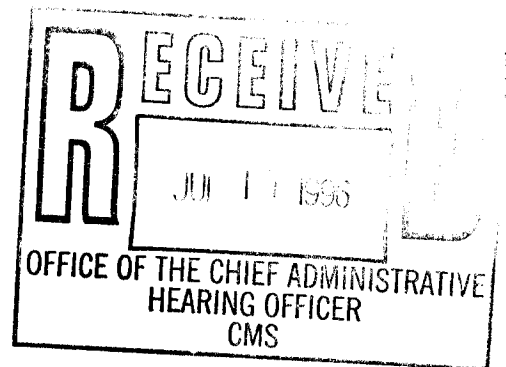
I hereby certify that on this 17th day of July, 1996, I have served copies of the foregoing Decision and Order Approving Consent Findings to the following persons at the addresses shown:

Dayna M. Dias, Esquire  
Immigration and Naturalization Service  
595 Ala Moana Blvd.  
Honolulu, Hawaii 96813  
(Counsel for Complainant)

Enrico V. Mercado  
1109 Likana Street  
Honolulu, Hawaii 96818-1128  
(Respondent)

Dea Carpenter, Esquire  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536

Office of Chief Administrative Hearing Officer  
Skyline Tower Building  
5107 Leesburg Pike, Suite 2519  
Falls Church, Virginia 22041



*Linda S. Hudecz*

Linda S. Hudecz  
Legal Technician to Robert L. Barton, Jr.  
Administrative Law Judge  
Office of Chief Administrative  
Hearing Officer  
5107 Leesburg Pike, Suite 2519  
Falls Church, VA 22041

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES DEPARTMENT OF )  
JUSTICE, IMMIGRATION AND )  
NATURALIZATION SERVICE, )  
Complainant, )  
vs. )  
Guam Trans-Pacific Builders, Inc. )  
and Enrico V. Mercado, )  
Individually, )  
Respondents )

8 U.S.C. § 1324a )  
INS Case No. AGA )  
OCAHO Case No. 96A00014 )  
Judge Robert L. Barton, Jr. )

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SETTLEMENT AGREEMENT

This Settlement Agreement (hereinafter "Agreement") is made and entered into by and between the United States Department of Justice, Immigration and Naturalization Service (hereinafter "INS") and Guam Trans-Pacific Builders, Inc., and Enrico V. Mercado, Individually, (hereinafter "Respondents"). INS and Respondents shall be collectively referred to herein as "the Parties".

WITNESSETH

WHEREAS, the INS has issued a Notice of Intent to Fine (Form I-763) issued on April 27, 1995 (hereinafter "the Notice") against the Respondents under Section 274A of the Immigration and Nationality Act, as amended, (hereinafter "the Act"), 8 U.S.C. § 1324a, in the above captioned case (hereinafter "the Action"); and

WHEREAS, INS has stated in the Notice that it intends to order Respondent to pay a fine in the amount of Forty-Six Thousand Seven Hundred and Forty-Seven Dollars and Fifty Cents (\$46,747.50) for 23 violations of INA § 274A(a)(2) and for 19 violations of INA § 274A(a)(1)(B); concerning Respondents' employment of the individuals listed in the attached exhibit A, and;

WHEREAS, a request for hearing before the administrative law judge dated May 8, 1995 was timely submitted by Respondents and a Complaint was filed by the INS on February 6, 1996; and

WHEREAS, the Parties to this Agreement desire to settle fully and finally the Action,

NOW, THEREFORE in consideration of the mutual promises, undertakings, and covenants contained herein, and intending to be bound by this Agreement, THE PARTIES AGREE AS FOLLOWS:

1. That the Notice and the allegations contained therein, are incorporated herein as though fully set forth;

2. That any request for a hearing filed by the Respondents pursuant to section 274A(e)(3) of the Act, 8 U.S.C. § 1324a(e)(3), and 8 C.F.R. § 274a.9, is hereby withdrawn and upon execution of this Agreement the parties will move the Office of the Chief Administrative Hearing Officer, pursuant to 28 C.F.R. § 68.14(a), to issue a Decision and Order in this Action in conformity with the provisions of this Agreement, which is a final and unappealable order pursuant to INA § 274A(e)(3) and shall have the same force and effect as an Order made after a full administrative hearing;

3. That upon dismissal of the Action by the administrative law judge, the INS will issue a Final Order (Form I-764) in this Action, in conformity with the provisions of this Agreement, which is a final and unappealable order pursuant to section 274A(e)(3) of the Act. This Final Order will issue in the sum of **Seven Thousand Six Hundred and Fifty Dollars (\$7,650)**. The Respondents agree to pay and, if respondents comply with the payments terms stated in paragraph 4, the INS agrees to accept **\$7,650** in full satisfaction of the Final Order and of all claims set forth in the Notice;

4. That the payment terms with which the Respondents must comply are as follows:

\$637.50 due on July 15, 1996;  
\$637.50 due on August 15, 1996;  
\$637.50 due on September 16, 1996;  
\$637.50 due on October 15, 1996;  
\$637.50 due on November 15, 1996;  
\$637.50 due on December 16, 1996;  
\$637.50 due on January 16, 1997;  
\$637.50 due on February 18, 1997;  
\$637.50 due on March 17, 1997;  
\$637.50 due on April 15, 1997;  
\$637.50 due on May 15, 1997;  
\$637.50 due on June 16, 1997;

5. That payments will be in the form of a **cashier's check or money order** made payable to the "Immigration and Naturalization Service," and will be hand delivered or mailed by certified or registered mail, return receipt requested to:

Assistant District Director for Investigations  
U.S. Immigration and Naturalization Service  
595 Ala Moana Boulevard  
Honolulu, Hawaii 96813

6. That if the Respondents fail to comply with the payment terms stated in paragraph 4, the Respondents further agree that ten dollars (\$10.00) per month shall be assessed as a reasonable administrative handling charge for each payment in default. In addition, for any default which continues for more than 90 days, a penalty charge of 6% per annum shall be assessed on the unpaid balance of \$46,747.50, the full amount which would be stated in a superseding Final Order;

7. If the Respondents fail to comply with the payment terms stated in paragraph 4, the Respondents agree that the full amount

stated in the Notice, \$46,747.50, less payment actually made, will become immediately due and payable to the INS, at the option of the INS. Failure to accelerate the amount due under the Agreement shall not constitute a waiver of the default, unless the failure to make payment, including all accrued interest, administrative charges, and penalties, shall have been cured before the notice of acceleration has been given. If the INS accelerates the amount due, it shall issue a superseding Final Order for the full amount stated in the Notice;

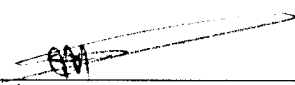
8. That in the event of any action to enforce any of the payment terms or conditions stated in paragraph 4, the INS shall be entitled to recover the reasonable attorneys fees incurred;

9. That at any time after this debt becomes due and payable, the Respondents authorize any United States Attorney, Assistant United States Attorney or attorney of record to appear for Respondents and to have the court clerk administratively enter judgment against the Respondents in any court. The judgment will be for the entire amount of the superseding Final Order, with interest, less payments actually made.

IN ADDITION, I WAIVE BOTH THE RIGHT TO BE NOTIFIED AND TO BE GIVEN COURT PAPERS AND HEREBY CONSENT TO HAVE JUDGMENT ENTERED AGAINST ME FOR THE UNPAID BALANCE OF THE DEBT.

FURTHER, I AGREE TO WAIVE MY RIGHTS TO HAVE THE CASE BROUGHT IN ANY APPROPRIATE COURT, TO RELEASE ANY ERRORS WHICH MAY INTERVENE IN ENTERING A JUDGMENT AGAINST ME OR IN ISSUING JUDGMENT PAPERS OR PROCEDURES, AND TO CONSENT TO THE RIGHTS OF ENTRY AND ENFORCEMENT OF THIS JUDGMENT. I MAKE THIS WAIVER WITH KNOWLEDGE OF THE EVENTS DESCRIBED HEREIN.

FURTHER, THIS WAIVER IS MADE KNOWINGLY, VOLUNTARILY, AND INTELLIGENTLY AND WITHOUT ANY DEGREE OF DURESS OR COMPULSION WHATSOEVER.

Date: June 21, 1996   
Enrico V. Mercado

WARNING: BY SIGNING THIS PAGE YOU GIVE UP YOUR RIGHT TO NOTICE AND A COURT TRIAL. IF YOU DO NOT PAY ON TIME, A COURT JUDGMENT WILL BE ENTERED AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE. THE POWERS OF A COURT CAN THEN BE USED TO COLLECT PAYMENT FROM YOU, EVEN IF YOU HAVE CLAIMS AGAINST THE CREDITOR.

10. That the Respondents will cease and desist from any further violations of section 274A of the Act, 8 U.S.C. § 1324a;

11. That Respondents understand that pursuant to section 274A(e)(4) of the Act, 8 U.S.C. § 1324a(e)(4), and 8 C.F.R. § 274a.10(b), employers determined to have knowingly hired an unauthorized alien or to have continued to employ an unauthorized alien in the United States in violation of law may be subject to civil money penalties as follows:

- a. First offense -- not less than \$250 and not more than \$2,000 for each unauthorized alien;
- b. Second Offense -- not less than \$2,000 and not more than \$5,000 for each unauthorized alien; and
- c. More than two offenses -- not less than \$3,000 and not more than \$10,000 for each unauthorized alien;

12. That nothing in this Agreement shall be construed as relieving Respondents of liability or penalties for any violations of section 274A of the Act, 8 U.S.C. § 1324a, other than those violations set forth in the Notice, nor shielding them from subsequent applicable penalties; and, Respondents waive any future right to challenge the Final Order to be issued, in this case or in any future enforcement proceedings;

13. That if the Respondents fail to comply with this



Agreement, the Attorney General, pursuant to section 274A(e)(9), 8 U.S.C. § 1324a(e)(9), is authorized to file suit to seek compliance with the Final Order in any appropriate district court;

14. That the INS releases and discharges the Respondents, parent corporations, subsidiaries, associated and affiliated entities, their officers, directors, representatives, employees, agents, successors, and assigns (hereinafter the "companies" and "persons") from any further penalties under section 274A of the Act, 8 U.S.C. § 1324a, for violations as set forth in the Notice, and this Agreement shall constitute a complete release from and bar to any and all causes of action, claims, rights, liens, or subrogated interests, by reason of or arising from the violations as set forth in the Notice;

15. That, subject to the exceptions previously noted in paragraph 9 with respect to collection actions involving the respondent's default in making installment payments, each party shall bear its own costs, attorneys fees, and other expenses incurred by such party in this Action in connection with any stage of this proceedings and waives the right to fees or other expenses under any provision of law, including the Equal Access to Justice Act;

16. That this Agreement shall be governed by, and construed in accordance with, the laws of the United States, the State of

Hawaii, and the Territory of Guam. Should any provision of this Agreement be declared or determined by any court or legal body to be illegal or invalid, the validity of the remaining parts, terms and provisions shall not be affected thereby, and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement;

17. That this Agreement shall be binding upon and inure to the benefit of and be enforceable by and against the INS and the Respondents and its/his heirs, assigns, partners, and successors in interest and all parent, subsidiary, and affiliated firms, corporations, and entities;

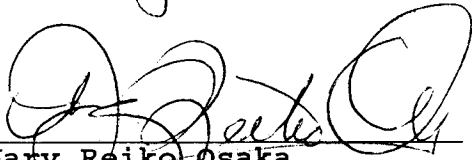
18. That this Agreement contains the entire understanding of the Parties and fully supersedes any and all prior agreements and understandings with respect to the subject matter hereof. There have been no representations, express or implied, concerning the subject matter hereof, except as contained herein;

19. That this Agreement may be amended or modified only by a written instrument duly executed by each of the Parties;

20. That this Agreement is effective on the date this Agreement is executed by the Parties;

21. That each party represents and warrants that this Agreement has been duly approved and authorized by such Party and constitutes a binding obligation of such Party, and that the officer or official signing this Agreement is authorized by the Party to sign on its behalf.

Dated: June 28, 1996



**Mary Reiko Osaka**  
District Counsel  
Approved as to Form



**Donald A. Radcliffe**  
District Director  
Honolulu District INS



**Enrico V. Mercado**  
Respondent

LSH

DS

MARY REIKO OSAKA  
District Counsel

DAYNA M. DIAS  
Assistant District Counsel  
Immigration and Naturalization Service  
595 Ala Moana Boulevard  
Honolulu, Hawaii 96813  
(808) 532-2149

Attorneys for Complainant

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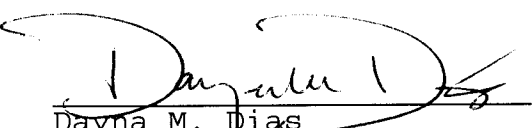
UNITED STATES DEPARTMENT OF	)	
JUSTICE, IMMIGRATION AND	)	
NATURALIZATION SERVICE,	)	8 U.S.C. § 1324a Proceeding
Complainant,	)	INS Case No. AGA 94-007
	)	
vs.	)	
Guam Trans-Pacific Builders, Inc.	)	
and Enrico V. Mercado,	)	OCAHO Case No. 96A00014
Individually,	)	
Respondents	)	Judge Robert L. Barton, Jr.
	)	


MOTION TO APPROVE CONSENT FINDINGS

Complainant, the United States Department of Justice, Immigration and Naturalization Service, by its attorney, Dayna M. Dias, and respondents by Enrico V. Mercado, respectfully request that this Honorable Court order the approval of the attached consent findings entitled "Settlement Agreement", pursuant to 28 C.F.R. § 68.14 and 28 C.F.R. § 68.52.

Dated: Honolulu, Hawaii

June 28, 1996

  
Dayna M. Dias  
Assistant District Counsel

  
Enrico V. Mercado  
Respondent